



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

### **PIEDMONT REGIONAL OFFICE**

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MILLER OIL COMPANY, INC.**

#### **SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15 (8a) and (8d) of the Code of Virginia issued by the State Water Control Board between the Board and Miller Oil Company, Inc., to resolve certain violations of the State Water Control Law and regulations, at two facilities, the Breez In 86 located at 11520 West Broad Street in Richmond, Virginia and the other known as Breez In Convenience Store located at 8430 West Broad Street in Richmond, Virginia. The violations result from failure to provide release detection records for the USTs and piping at both sites, and for failure to provide a change in ownership registration; failure to provide proof of corrosion protection for the UST and piping; and for failure to provide documentation of release detection.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "Regional Office" or "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
7. "Miller Oil" means Miller Oil Company, Inc.
8. "Site" means the Miller Oil property located at 8430 West Broad Street in Richmond, Virginia.
9. "Breez In 86" means the Miller Oil property located at 11520 West Broad Street, in Richmond, Virginia. It has Department Facility ID number 4-006650.
10. "Breez In Convenience Store" means the Miller Oil property located at 8430 West Broad Street, in Richmond, Virginia. It has Department Facility ID number 4-001507.
11. "UST" means underground storage tank.
12. "The Regulation" means 9 VAC 25-580-10 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), which contain requirements for release reporting, investigating suspected releases, and corrective action.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Regulation requires that owners/operators having USTs must have available for Department review release detection records for all USTs; ownership and registration documents of USTs must be current and on file; and USTs and the associated piping must be protected from corrosion in accordance with the regulations.
2. Miller Oil is an UST owner within the meaning of Code § 62.1-44.34:8.
3. On October 14, 2004, DEQ staff conducted an inspection of the Breez In 86 site. The inspection noted that the release detection records for the UST and piping were not available during the time of the inspection. These documents were subsequently provided to the Department.
4. On November 22, 2004, DEQ staff conducted an inspection of the Breez In Convenience Store site. The inspection noted that the release detection records for the UST and piping were not available during the time of the inspection. These documents were subsequently provided to the Department. The inspection also noted that the change of ownership and tank registration records had not been updated as required by the regulations. These documents were subsequently provided to the Department. The Department also was not able to determine if the UST and the associated piping was protected from corrosion as required by the regulations. These documents were also subsequently provided to the Department. The

release detection records provided to the Department indicate that this site is not meeting the release detection requirements of the regulations.

5. On May 4, 2005, a Warning Letter was issued to Breez In 86 for failure to have available the release detection records. The Department requested the records be made available by June 6, 2005. The records were not made available to the Department until after the Notice of Violation was issued on September 23, 2005.
6. On August 12, 2005, a Warning Letter was issued to Breez In Convenience Store for failure to have available the release detection records. The Department requested the records be made available by September 12, 2005. The records were not made available to the Department until after the Notice of Violation was issued on September 27, 2005. The Warning Letter also cited the facility for not updating the registration requirements including a change in ownership and updating tank data. The Warning Letter also addressed deficiencies concerning UST and piping protection from corrosion; as well as procedures used to determine releases from the UST and associated piping.
7. On September 23, 2005 and September 27, 2005 Notices of Violation were issued to Breez In 86 and Breez in Convenience Store respectively.
8. On November 15, 2005, DEQ met with representatives of Miller Oil to discuss resolution of the above issues.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§62.1-44.15 (8a) and (8d) orders Miller Oil, and Miller Oil voluntarily agrees to pay a civil charge of \$6,000 within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
P.O. Box 10150  
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, Miller Oil shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Miller Oil, for good cause shown by Miller Oil, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Miller Oil by DEQ on September 23 and 27, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Miller Oil admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Miller Oil consents to venue in the Circuit Court of the City of Richmond, VA, for any civil action taken to enforce the terms of this order.
5. Miller Oil declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Miller Oil to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Miller Oil shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Miller Oil shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Miller Oil shall notify the PRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the Regional Director within twenty-four hours of learning

of any condition above, which Miller Oil intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

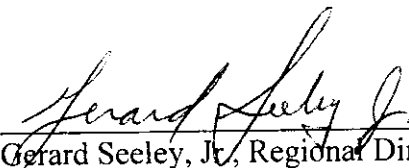
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Miller Oil. Notwithstanding the foregoing, Miller Oil agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Miller Oil petitions the Regional Director to terminate the Order after it has completed all of the requirements of the Order. The Regional Director's determination that Miller Oil has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
- b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days notice to Miller Oil.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Miller Oil from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

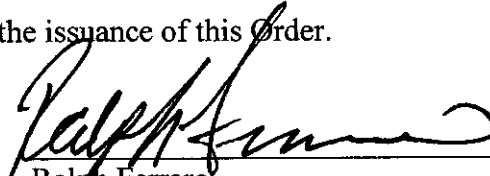
12. By its signature below, Miller Oil voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of June, 2006.

  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Miller Oil voluntarily agrees to the issuance of this Order.

Date: 2/3/2006

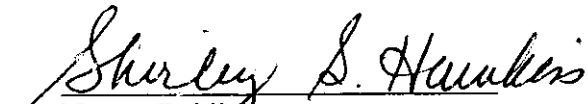
  
Ralph Ferraro

Commonwealth of Virginia

City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 3rd day of  
FEBRUARY, 2006, by RALPH Ferraro, who is  
(name)

Operations Mgr. of Miller Oil.  
(title)

  
Notary Public

2/28/07  
My commission expires

## **APPENDIX A**

Miller Oil shall:

1. Within 30 days of the execution of this Order, provide the Department a copy of the invoice/work order for the installation of the anodes to protect the flex connectors.
2. Within 30 days of the execution of this Order, conduct a test to verify the protection of the flex connectors and provide the results of the test to the Department within 45 days of conducting the test.
3. Within 30 days from the execution of this Order, provide the Department a copy of a valid tank chart to do Statistical Inventory Reconciliation ("SIR") and provide within 60 days valid passing SIR results or complete within 60 days from the execution of this Order the installation of an acceptable alternative method to determine release detection as required by the regulations.